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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,628	03/23/2001	Frank Venegas JR.	IDS-11605/14	4648

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EXAMINER

STODOLA, DANIEL P

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/815,628

Applicant(s)

VENEGAS, FRANK

Examiner

Daniel P. Stodola

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to ~~communication(s) filed on~~ Board decision mailed 31 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-8, 15-21 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 4, 16 and 18-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-8, 15, 17, and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

In accordance with the decision on appeal mailed March 31, 2005, the subject matter of claim 17 has been reviewed in light of the ground of rejection suggested by the Board in the Remand portion of their decision. This rejection appears to be appropriate. Accordingly, prosecution has been reopened so that this rejection can be advanced.

### ***Election/Restrictions***

Claims 4, 16 and 18-21 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on July 2, 2002.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 8, 15, 17, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Venegas, Jr. et al '077 in view of either Venegas, Jr. '739 or Bobrowski.

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Venegas, Jr. et al '077 disclose a handrail assembly comprising a pair of spaced apart vertical posts (22) having upper and lower ends, the lower end being configured to engage a support surface (note Figs. 1, 2 and 5); replaceable polymerized sheathing (30, 33, 36) surrounding each post, the sheathing having an inner diameter equal to or greater than the outside diameter of the posts and extending substantially the entire height of the posts; an upper rail (58) extending between the posts and being releasably engaged to the upper ends of the posts; a lower rail (42) extending between the vertical posts below the upper rail and being releasably engaged thereto; replaceable polymerized sheathing (46, 62) surrounding each rail and extending substantially the entire length of the rails, the sheathing having an inner diameter equal to or greater than the outside diameter of the rails; the vertical posts and rails defining a perimeter frame having a framed area defined therein (note Fig. 1) whereby the top edge is defined by the upper rail, the lower edge is defined by the lower rail and the sides are defined by the vertical posts. Venegas, Jr. et al '077 do not disclose an infill panel supported in the framed area.

Venegas, Jr. '739 discloses a similar handrail assembly (see Fig. 1) and establishes that the provision of an infill panel (40, 42) supported in the framed area is old and well known in the handrail art. Bobrowski also discloses a similar handrail assembly and establishes that the provision of an infill panel (16) supported in the framed area is old and well known in the handrail art. It is readily apparent from each of Venegas, Jr. '739 and Bobrowski that the infill panel forms a barrier that restricts access through the framed area of the handrail assembly.

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With respect to Venegas, Jr. et al '077, applicant's attention is directed to Col. 1, lines 9-11, wherein it is disclosed that the handrail assembly thereof has applications in stadiums and balconies. These environments usually entail great heights and the handrail assemblies used therewith are intended to control movement and provide safety from potentially dangerous falls. To one of ordinary skill in the art, it would have been obvious to provide the handrail assembly of Venegas, Jr. et al '077 with an infill panel supported in the framed area as taught by either Venegas, Jr. '739 or Bobrowski so as to prevent access through the framed area and provide additional safety from potentially dangerous falls. It would have been further obvious to one of ordinary skill in the art to provide Venegas, Jr. et al '077 with the infill panel as taught by either Venegas, Jr. '739 or Bobrowski for such reasons as to provide a pleasing decorative appearance to the handrail assembly and/or to provide advertising space. In this regard, it should be noted that Bobrowski clearly establishes appearance as one possible design criteria (note Col. 1, lines 13-16) and in stadium settings especially, the desire to maximize advertising revenue would motivate one to fill the otherwise dead space of the framed area of the Venegas, Jr. et al '077 handrail assembly with advertising panels.

With respect to claim 5, both Venegas, Jr. '739 and Bobrowski illustrate that the infill panel substantially consumes the framed area and therefore it would have been obvious to one of ordinary skill in the art that any infill panel provided to the handrail assembly of Venegas, Jr. et al '077 as advanced above would substantially consume the framed area.

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With respect to claim 6, Venegas, Jr. et al '077 do not disclose the use of U-channel sections affixed to each of the posts and rails for mounting the infill panel. Venegas, Jr. '739 discloses a handrail assembly and teaches the provision of U-channel sections (32) affixed to the posts and rails for mounting the infill panel thereto. It would have been obvious to one of ordinary skill in the art to provide the handrail assembly of Venegas, Jr. et al '077 with U-channel sections as taught by Venegas, Jr. '739 for the purpose of facilitating mounting of the infill panel to the posts and rails.

With respect to claim 8, both Venegas, Jr. '739 and Bobrowski teach the provision of a solid infill panel. Accordingly, it would have been obvious to one of ordinary skill in the art that any infill panel provided to the handrail assembly of Venegas, Jr. et al as advanced above would be solid.

With respect to claim 15, Venegas, Jr. et al '077 do not disclose the use of structural slip-on fittings to interconnect the rails with the posts. Bobrowski discloses a handrail assembly and teaches the use of structural slip-on fittings to interconnect the rails with the posts. The fittings of Bobrowski possess an inner perimeter that is equal to or greater than the outer perimeter of the post/rails to which it is connected. To one of ordinary skill in the art, it would have been obvious to provide Venegas, Jr. et al '077 with slip-on fitting to connect the rails with the posts as taught by Bobrowski, as well as to configure these fittings to correspond to the existing circular shape of the rails and posts of Venegas, Jr. et al '077, producing no new and unexpected results.

With respect to claim 25, Fig. 2 of Venegas, Jr. et al establishes that the posts, rails and sheathing are substantially straight.

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Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Venegas, Jr. et al '077 in view of either Venegas, Jr. '739 or Bobrowski as applied to claims 5, 6, 8, 15, 17, and 25 above, and further in view of Parisien. With respect to claim 7, Venegas, Jr. et al '077 in view of either Venegas, Jr. '739 or Bobrowski do not disclose that the infill panel is a mesh screen. However, Parisien teaches that mesh screen panels are well known per se in the art and are conventional alternatives to solid panels (e.g., note abstract, lines 1-3). Accordingly, it would have been an obvious matter of engineering design choice for one of ordinary skill in the art to provide Venegas, Jr. et al '077 with screen mesh panels instead of solid panels because it is well-within the level of skill of one of ordinary skill to utilize known features of the art for the purpose for which they are known and the use of screen mesh panels instead of solid panels produces no new and unexpected result.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P. Stodola whose telephone number is 571-272-7087. The examiner can normally be reached on Monday through Friday from 6:00 a.m. to 2:30 p.m.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

STODOLA  
July 29, 2005

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is fluid and cursive, with the first name "Daniel" and last name "Stodola" clearly legible, and a middle initial "P." in between.

DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600